IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF SEPTEMBER 2005

PRESENT

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

AND

THE HON'BLE MR. JUSTICE H.G.RAMESH

MISCELLANEOUS FIRST APPEAL NO.6407 OF 2005

BETWEEN:

THE DIVISIONAL MANAGER
THE ORIENTAL INSURANCE CO LTD.,
KIROLOSKAR ROAD, BELGAUM.
REP. BY THE MANAGR
THE ORIENTAL INSURANCE CO LTD.,
REGIONAL OFFICE,
LEO SHOPPING COMPLEX,
NO 44/45, RESIDENCY ROAD,
BANGALORE 560 025 .. PETITIONER

(BY SRI M U POONACHA, ADVOCATE.)

AND :

1 SMT.SUSHILA @ AKKATAI
W/O MAHADEV SARAWADI
AGED 44 YEARS
OCC: HOUSEHOLD
R/AT SANKESHWAR
HUKKERI TALUK

2 SRI MAHADEV MALLAPPA SARAWADI
FATHER'S NAME NOT KNOWN
AGED 54 YEARS
OCC: SERVICE
R/AT SANKESHWAR
HUKKERI TALUK

3 SMT. ANJANA MALLIKARJUN SARAWADI
W/O MALLIKARJUN SARAWADI
MAJOR, OCC: HOUSEHOLD
R/AT SANKESHWAR
HUKKERI TALUK

4 SRI SUNIL NINGAPPA RAMPARE
FATHER'S NAME NOT KNOWN
MAJOR,
R/AT BADAGAON GADHINGLAJ TALUK
KOLHAPUR DISTRICT

5 SRI KEMPANNA GURAPPA YADAGUDI
FATHER'S NAME NOT KNOWN
AGED 54 YEARS
R/AT GADHINGLAJ TALUK
KOLHAPUR DISTRICT

6 SRI CHANDRAKANT APPAYYA
GHULANAVAR
S/O APPAYYA GHULANAVAR
MAJOR, OCC: AGRICULTURE
R/AT BASARAGI, GADHINGLAJ TALUK
KOLHAPUR DISTRICT

7 SRI VINOD ARJUN MOKASHI
FATHER'S NAME NOT KNOWN
MAJOR, OCC: AGRICULTURE
R/AT NAGANUR, GADHINGLAJ TALUK
KOLHAPUR DISTRICT .. RESPONDENTS

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT AGAINST THE JUDGMENT AND AWARD DATED 12.04.2005 PASSED IN M.V.C. NO.1621/2001 ON THE FILE OF THE CIVIL JUDGE (SR. DN.) & MEMBER, A.M.A.C.T., HUKKERI, AWARDING COMPENSATION OF RS.6,09,000/- WITH INTEREST AT 6% P.A.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **RAMESH J.,** DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the Insurance Company is directed against the judgment and award dated 12th April 2005 passed in M.V.C.No.1621 of 2001 by the Addl M.A.C.T., Hukkeri. By the impugned judgment,

the Tribunal has awarded a compensation of Rs.6,09,000/- to Respondent Nos. 1 to 3 - claimants, who are respectively the parents and widow of the deceased one Mallikarjun Mahadev Sarawadi, who died due to the injuries sustained by him in a motor accident that occurred on 25th January 2001.

2. The sole contention urged by the learned counsel appearing for the appellant – Insurance Company is that the monthly income of the deceased assessed by the Tribunal at Rs.4,000/- is excessive and requires to be appropriately reduced.

3. The Tribunal, on the basis of the certificate – Ex.P.5, which show that the deceased got a pigmy commission of Rs.3,190/- during the month of December 2001, has assessed the monthly income at Rs.4,000/-. We may notice that the deceased was aged about 25 years at the time of the accident. Having regard to his young age and the income earned by him by way of commission during the month of

December 2001, it cannot be said that the assessment made by the Tribunal is excessive particularly having regard to his prospect of better earnings in future. We may also add that the Tribunal has relied on a Division Bench decision of this Court reported in **2004(1) KCCR 238** wherein this Court has taken the notional income of a housewife at Rs.100/- per day. On an overall view of the matter, we do not see any error in the assessment of income of the deceased made by the Tribunal to warrant interference in appeal. As the sole contention urged on behalf of the appellant fails, the appeal requires to be dismissed. Accordingly, it is dismissed. The amount lying in deposit with this Court shall be transferred to the Tribunal.

4. We notice that the Tribunal has ordered payment of 50% of the compensation amount to the widow of the deceased which is contrary to the law laid down by the Supreme Court in **GENERAL MANAGER, KERALA STATE ROAD TRANSPORT CORPORATION**

Vs. Mrs.SUSAMMA THOMAS AND OTHERS reported in **AIR 1994 SC 1631**. Therefore, we direct the Tribunal to pass an appropriate order with regard to investment of the amount that has fallen to the share of the widow of the deceased in the light of the law laid down by the Supreme Court in **Mrs.SUSAMMA THOMAS** case (supra) after hearing the claimants. The Tribunal shall communicate the order passed in this behalf to this Court.

Appeal dismissed with the above observations. No costs.

Sd/-
JUDGE

Sd/-
JUDGE

Shl/ck